

# Exhibit B

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF NEW YORK

3 SUSANNA MIRKIN, et al., . Docket No.  
4 Plaintiffs, . 1:18-CV-02949-ARR-JAM  
5 v. . Brooklyn, New York  
6 XOOM ENERGY, LLC, et al., . Friday, January 19, 2024  
7 Defendants. . 11:00 a.m.  
8 . . . . .

9  
10 TRANSCRIPT OF STATUS CONFERENCE  
11 BEFORE THE HONORABLE JOSEPH A. MARUTOLLO  
12 UNITED STATES MAGISTRATE JUDGE

13 APPEARANCES:

14 For the Plaintiffs: Wittels McInturff Palikovic  
15 STEVEN L. WITTELS, ESQ.  
16 J. BURKETT MCINTURFF, III, ESQ.  
17 ETHAN D. ROMAN, ESQ.  
18 18 Half Mile Road  
19 Armonk, New York 10504

20 For the Defendants: McDowell Hetherington LLP  
21 MICHAEL D. MATTHEWS, JR., ESQ.  
22 DIANE S. WIZIG, ESQ.  
23 DAVID L. VILLARREAL, ESQ.  
24 1001 Fannin Street  
25 Suite 2400  
Houston, Texas 77002  
713-337-5580

Transcription Service: Superior Reporting Services LLC  
P.O. Box 5032  
Maryville, TN 37802  
865-344-3150

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1 P R O C E E D I N G S

2 THE CLERK: Docket number 18-cv-2949, Mirkin et al.  
3 versus Xoom Energy, LLC, et al.

4 Parties, please state their appearances for the  
5 record starting with the plaintiff.

6 MR. MCINTURFF: Good morning, Your Honor.

7 MR. WITTELS: For Plaintiffs --

8 MR. MCINTURFF: Sorry, Your Honor.

9 MR. WITTELS: Did you want to --

10 MR. MCINTURFF: Good morning, Your Honor. This is  
11 Burkett McInturff on behalf of Plaintiffs. Plaintiff in the  
12 class, and I have with my colleagues Steven Wittels and Ethan  
13 Roman also on behalf of Plaintiff and the class.

14 MR. MATTHEWS: Good morning, Your Honor.

15 THE COURT: Good morning.

16 MR. MATTHEWS: I'm sorry about that, Your Honor.

17 This is Matt Matthews for Xoom and also with me this morning  
18 are my colleagues, Diane Wizig and David Villarreal.

19 THE COURT: Okay. Great. So we're here for a  
20 status conference in this case. This case has been, as  
21 you're aware, transferred to me From Judge Reyes. So let me  
22 just get some background here on where things are.

23 From Plaintiffs' perspective, especially in light  
24 of the recent developments from the Second Circuit and the  
25 proposed path forward from Plaintiff's perspective.

1 submit our in limine motion.

2 So that is something when my colleague Mr.  
3 McInturff said we have to work hard at, this just not  
4 submitting things to do that you will do. We have to be  
5 giving the judge a package of exactly what motions he has to  
6 decide, and they'll be briefed. So it's quite clear from Mr.  
7 Matthews' description if he thinks the motion that he plans  
8 that experts can't testify, and of course we disagree with  
9 that. That'll be part of an in limine motion.

10 The second aspect of a motion to decertify the  
11 class, I believe it's time barred, number one, but even if it  
12 weren't, he's suggesting things about common proof that  
13 really go to the class cert issue. The judge has already  
14 articulated a request motion that there's ample ground for  
15 the Plaintiffs to present common proof that the Defendants  
16 violated the contract. And this is a simple breach of  
17 contract claim, which his courts over the years -- all the  
18 courts in the Second Circuit and elsewhere in the country  
19 have said that breach of contract cases are ideally suited  
20 for common resolution, as is our case.

21 And the question is, will the jury agree that the  
22 Defendants breach the contract? And, Judge, if you read our  
23 decision, it's articulated many reasons why she thinks  
24 there's a question of fact as to that question, that the  
25 (indiscernible) violated the contract by not using and not

1 date, that could complicate the process that Your Honor has  
2 outlined.

3 So I just wanted to --

4 THE COURT: Understood.

5 MR. WITTELS: -- bring that to everyone's  
6 attention.

7 THE COURT: Understood. All right. Well, thanks  
8 very much. We'll set an order after this conference.

9 MR. MATTHEWS: Thank you, Your Honor.

10 MR. MCINTURFF: Thank you, Your Honor.

11 MR. WITTELS: Good day.

12 (Proceedings adjourned at 11:36 a.m.)  
13

14 TRANSCRIBER'S CERTIFICATE

15 I certify that the foregoing is a correct  
16 transcript from the electronic sound recording of the  
17 proceedings in the above-entitled matter.  
18

19 February 6, 2024

20 *Faith Vance*

21 Faith Vance

\_\_\_\_\_  
DATE

22 Legal Transcriber  
23  
24  
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